CELSIUS ENERGY COMPANY (ON RECONSIDERATION)

IBLA 97-152R Decided March 10, 2001

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring that a noncompetitive oil and gas lease had terminated by operation of law. COC-50112.

Affirmed in part, set aside in part, and remanded.

1. Oil and Gas Leases: Communitization Agreements--Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination

Upon the termination of a communitization agreement to which a segregated oil and gas lease was committed, BLM properly concluded that the lease continued only for 2 years and so long thereafter as oil or gas was produced in paying quantities from or attributable to the leasehold, pursuant to the Mineral Leasing Act, as amended, 30 U.S.C. § 226(m) (1994), regardless of whether the lease was in an indefinite extended term, being held by continuing production on the base lands at the time of termination.

APPEARANCES: Eric L. Dady, Esq., Celsius Energy Company, Salt Lake City, Utah, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

By order dated May 14, 1997, we granted the petition for reconsideration by the Celsius Energy Company (Celsius), thus reinstating its appeal from a November 20, 1996, decision of the Colorado State Office, Bureau of Land Management (BLM). 1/ BLM's decision declared that Celsius'

1/ We had originally dismissed Celsius' appeal by order dated Apr. 15, 1997, as it did not appear that a statement of reasons for appeal (SOR) had been filed as required by 43 C.F.R. § 4.412(a). The order was vacated on May 14, 1997, and the appeal reinstated, when we confirmed that an SOR had been timely filed on Jan. 15, 1997, but, due to an erroneous reference by Celsius on the face of the document, was not properly attributed to the instant appeal. We also afforded BLM an opportunity to respond to Celsius' SOR within 30 days of receipt of our order. No answer was filed.

noncompetitive oil and gas lease (COC-50112) had terminated by operation of law on September 18, 1994, due to the absence of production from the lease at that time.

As Lease COC-50112 was segregated from Federal Oil and Gas Lease C-8035, it is appropriate to review the history of the latter. Lease C-8035 was issued to Celsius' predecessor-in-interest effective January 1, 1969, for a term of 10 years and so long thereafter as oil or gas was produced in paying quantities, pursuant to the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181-287 (1994). Lease C-8035 covered 1,857.10 acres in secs. 5, 6, 7, and 8, T. 2 S., R. 103 W., Sixth Principal Meridian, Rio Blanco County, Colorado. The entire record title interest in lease C-8035 was assigned to Celsius effective July 1, 1985.

The record shows that two wells were completed on lease C-8035 prior to lease segregation in December 1988. Well No. 8-1 was completed on January 29, 1979, in the NW¼SE¼ of sec. 8. First production in paying quantities was reported to BLM by the Conservation Division, U.S. Geological Survey, on February 14, 1979. Accordingly, on February 21, 1979, BLM notified Mountain Fuel Supply Company, the then lessee of record, that the lease term for lease C-8035 had been extended through December 21, 1980, and so long thereafter as oil or gas is produced in paying quantities.

On October 31, 1985, the Rabbit Mountain No. 6-1 Well was completed for gas in the SE¼NW¼ sec. 6. On January 30, 1986 (effective September 13, 1985), BLM approved Communitization Agreement No. COC-44685 (CA COC-44685), covering 195.43 acres from lease C-8035 and 106.88 acres from lease C-36988-A, which covered neighboring lands. 2/ The CA communitized all rights to natural gas and associated liquid hydrocarbons producible from the Dakota Formation underlying those lands. It appears that the CA was formulated to allow for the distribution of production from the Rabbit Mountain No. 6-1 Well.

In December 1988, lease C-8035 had been redesignated as COC-8035 and remained in an extended term by reason of production. Effective December 9, 1988, the lands in COC-8035 that were not covered by CA COC-44685 (constituting 1,661.67 acres) were committed to the Rabbit Mountain Unit Agreement (No. COC-49290X). 3/

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fn. 1 (continued)

In our order, we directed BLM to return the case record to us immediately, but it did not do so until December 1999, delaying our consideration of the matter.

2/ The communitized lands from Lease C-8035 were Lots 3 and 5, and E½SW¼ and SE¼NW¼, sec. 6, T. 2 S., R. 103 W., Sixth Principal Meridian, Rio Blanco County, Colorado. The communitized lands from Lease C-36988-A were Lots 4, 6, and 7 in the same section.

3/ Although that unit agreement was called the "Rabbit Mountain Unit Agreement," it did not include the land on which the Rabbit Mountain No. 6-1 Well was found. It actually included everything in lease COC-8035 except that land.

By decision dated June 23, 1989, pursuant to 43 C.F.R. § 3107.3-2, BLM created the lease at issue here (COC-50112) by segregating out from lease COC-8035 the 195.43 acres previously committed to CA COC-44685. 4/ BLM notified Celsius that the segregated lease (COC-50112) would be extended for 2 years from the date of segregation (that is, from the effective date of the unit until December 9, 1990) and so long thereafter as oil or gas is produced in paying quantities, pursuant to 43 C.F.R. § 3107.3-2. (June 23, 1989, Decision at 1.) 5/ However, it further stated:

> As the base lease, COC8035, has production attributable to the lands therein and the full lease was extended by production at the time of segregation, the segregated lease, COC50112, shall continue for so long as COC8035 remains in a producing status. * * * As the segregated lease, COC50112, has production attributable to the lands therein and the full lease was extended by production at the time of segregation, the base lease, COC8035, shall continue for so long as COC50112 remains in a producing status.

(BLM Decision dated June 23, 1989, at 1-2 (emphasis added).) BLM thus held that segregated lease COC-50112 would be held by production on base lease COC-8035, and vice versa.

In sum, at the time of segregation, production was attributable to the entire 1,857.10-acre original COC-8035 leasehold by virtue of the fact that there were two producing wells there: Rabbit Mountain Well No. 6-1, in the SE¼NW¼ sec. 6, and lease Well No. 8-1 in the NW¼NE¼ sec. 8. Following segregation, the segregated lease (COC-50112) contained Rabbit Mountain Well No. 6-1 and the base lease (COC-8035) contained Well No. 8-1.

Production subsequently ceased from Rabbit Mountain Well No. 6-1, and that well was plugged and abandoned on September 18, 1992. (Last Production Notice dated Oct. 19, 1992.) The termination of production from that well led to the termination of communitization agreement CA COC-44685. By decision dated May 14, 1993, BLM notified Celsius that it had "received

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4/ Thus, segregated lease COC-50112 covered 195.43 acres described as Lots 3 and 5, and E½SW¼ and SE¼NW¼, sec. 6, T. 2 S., R. 103 W., Sixth Principal Meridian, Rio Blanco County, Colorado.

5/ BLM also notified Celsius as follows concerning extension of the term of the base lease (COC-8035): "The segregation of lands into COC50112 effectively eliminated lease COC8035 from [CA] COC44685. Accordingly, pursuant to 43 CFR 3107.4, the term of lease COC8035 is extended through December 9, 1990, a[nd] so long thereafter as oil or gas is produced in paying quantities." (BLM June 23, 1989, Decision at 2.) BLM also notified Celsius that it deemed base lease COC-8035 to be producing and in minimum royalty status. Id.

The term of base lease COC-8035 is not directly at issue herein.

notification that [CA COC-44685] has terminated," and that, "[a]s a result, [lease COC-50112] is no longer committed to it." BLM held that "[t]he effect of the [agreement's] termination supersedes" the holding in its June 23, 1989, decision, and that lease COC-50112 "is no longer held by production on" lease COC-8035 "as stated in the prior decision." Instead, BLM concluded, lease COC-50112 would continue only for 2 years, through September 18, 1994, "and for so long thereafter as oil or gas is attributable to it." BLM cited as authority our decision in Celsius Energy Co., 99 IBLA 53, 94 I.D. 394 (1987) (Celsius I), as well as 43 C.F.R. § 3107.4. BLM thus reversed its June 1989 declaration that lease COC-50112 could be held by continuing production from Well No. 8-1 on lease COC-8035. As will be shown below, that action was correct.

Celsius did not appeal, but responded to BLM on July 13, 1993, questioning the basis for BLM's May 1993 decision. BLM replied on July 19, 1993, noting that lease COC-50112 "should no longer be coterminous with lease" COC-8035 and citing Celsius I for the proposition that "leases entitled to * * * extensions are no longer entitled to continue indefinitely based upon production occurring on another lease, even though both of those leases may originally have been parts of a single lease." (BLM July 19, 1993, Letter at 1.) However, BLM indicated its willingness to reconsider the matter after IBLA issued its decision in another appeal that was then pending and invited the "filing of a waiver of [Celsius'] lease rights" pursuant to 43 C.F.R. § 3108.5 (1992) in order to "allow [Celsius] some additional development time." 6/ Id. at 2. The pending appeal in question was Celsius Energy Co., IBLA 92-32. 7/

BLM's July 1993 letter was received by Celsius on July 22, 1993, and the 30-day period for taking any appeal from that letter expired on August 23, 1993. Celsius filed a notice of appeal on September 13, 1993. Regardless of whether Celsius' appeal is construed to have been from either its May 1993 decision or its July 1993 letter, BLM correctly concluded that the appeal was untimely under 43 C.F.R. § 4.411(a) and that the delay in filing was not waived pursuant to the 10-day grace period provisions of 43 C.F.R. § 4.401(a). It accordingly dismissed the appeal pursuant to 43 C.F.R. § 4.411(c) by decision dated September 24, 1993. The question of when the term of Lease COC-50112 expired was unresolved.

6/ BLM's election in this letter to reconsider its May 1993 decision moots the question whether that decision became administratively final. See Kirby Exploration Co. of Texas (On Reconsideration), 149 IBLA 205, 209 (1999).

7/ In that case, we were considering whether a segregated lease may continue to be held by production attributable to the base lease at the time of segregation, in circumstances where units to which the segregated leases were committed were contracted in size, eliminating a part of each lease from a unit.

The failure to appeal timely did not close the matter, as, in its September 24, 1993, decision, BLM invited Celsius to apply for a suspension of the term of segregated lease COC-50112 pursuant to 43 C.F.R. § 3108.5, pending the Board's decision on the controlling question of law in Celsius Energy Co., IBLA 92-32. BLM's action amounted to a decision to reconsider its earlier holding concerning the term of that lease. 8/ Celsius sought such a suspension on October 12, 1993, and BLM suspended the lease by decision dated November 12, 1993. The suspension was effective November 1, 1993, and was to continue until the first of the month (1) in which Celsius resumed operations on the leasehold, (2) in which Celsius assigned or transferred any interest in the lease, or (3) after which Celsius received notice from BLM of whether it would vacate its May 14, 1993, decision relating to COC-50112 in light of the eventual ruling by the Board in Celsius Energy Co., IBLA 92-32. (Nov. 12, 1993, Decision at 1.)

On March 7, 1995, the Board issued its decision in Celsius Energy Co., IBLA 92-32, styled Celsius Energy Co., 132 IBLA 131 (1995) (Celsius II). Thereafter, BLM issued the November 1996 decision on appeal herein, reconsidering the question of the term of segregated lease COC-50112 by applying the Board's March 1995 ruling in Celsius II. That decision holds:

> [Lease COC-8035] was held by production from [CA COC-44685], which was segregated to [Lease COC-50112]. When production from that source [(i.e., the CA)] ceased, [Lease COC-8035] was no longer tied to [Lease COC-50112]. Leasehold production, established prior to segregation of the base lease, from well No. 8-1 will not serve to continue [Lease COC-50112] because the reason for segregation was commitment to a unit and not approval of a partial assignment.
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> As no other production is attributable to [Lease COC- 50112] and the suspension was effectively lifted by the IBLA decision, the lease is deemed to have terminated by cessation of production as of September 18, 1994.

(Nov. 20, 1996, Decision at 2.) Celsius filed a timely appeal of BLM's November 20, 1996, decision.

Celsius contends on appeal that, under the Celsius precedents, following expiration of its initial 2-year extended term on December 9, 1990, segregated lease COC-50112 was held by any production that had been attributable to lease COC-8035 as it existed in December 1988 immediately prior to lease segregation (which it calls the "parent lease"): "[A]fter the 2-year definite term of the Segregated Lease immediately following

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8/ Once again, BLM's election in this letter to reconsider the whole question of what the term of the segregated lease should be moots the question whether that decision became administratively final. See Kirby Exploration Co. of Texas (On Reconsideration), 149 IBLA at 209.

termination of its CA, the Segregated Lease continues to be held by production on the Base Lease (if such production still exists) due to the Parent Lease being in an indefinite term at the date of segregation." (SOR at 5.) It maintains that, "[t]he fact that the CA terminated on September 18, 1992, resulting in a further two year extension of the Segregated Lease to September 18, 1994, does not negate the original [held by production] status of COC-50112 at the time of its segregation from the extended term Base Lease." Id.

Celsius thus argues that BLM's determination that the segregated lease was subject only to the 2-year extension pursuant to 30 U.S.C. § 221(m) (1994) (as a result of termination of the CA) fails to take into account the continuing extension of the lease by virtue of the production from Well No. 8-1. It accordingly asks us to reverse BLM's November 1996 decision holding that the segregated lease had terminated by operation of law on September 18, 1994, at the expiration of the 2-year extension dating from termination of the CA. (SOR at 6.)

[1] We held in Celsius I that,

> [w]hen a lease is entirely eliminated from a unit, its tenure is governed by the following provisions of 30 U.S.C. [§ 226(m) (1994) 9/]: "Any lease which shall be eliminated from any * * * [cooperative or unit] plan * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities." (Emphasis supplied.) Because the lease was not in its original term at the time of its elimination from the unit, it was extended for "two years, and so long thereafter as oil or gas is produced in paying quantities." Several observations may be made about this provision. First, its use of the word "shall" makes it mandatory, so it leaves no room for the exercise of discretion. Second, it applies to any lease eliminated from a plan, so there are no exceptions. Third, its meaning is clear, so there is no room for the exercise of interpretation.

99 IBLA at 64, 94 I.D. at 400-01. Thus, under 30 U.S.C. § 226(m) (1994), the complete elimination of a unitized lease from its unit would afford the lease only the 2-year extension (and so long thereafter as oil or gas was produced in paying quantities). 99 IBLA at 64-65, 94 I.D. at 400-01. Our rationale for applying this rule to segregated leases was that the statute applies to "[a]ny lease which shall be eliminated from any * * * [unit] plan," and was mandatory. We reasoned that this interpretation comports with the legislative intent of the statute, which was to require that,

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9/ The actual cite is to 30 U.S.C. § 226(j) (1988). That section was redesignated as 30 U.S.C. § 226(m) (1994) following the 1992 Amendments.

where a lease was excluded from a unit and not added to another unit, the lease must thereafter be produced, providing an adequate time of 2 years to do so. 99 IBLA at 71-72, 94 I.D. at 405.

We note also that this rule applies only where a lease is not in its original term. In the instant case, the original term of base lease C-8035 expired on January 1, 1979. Accordingly, segregated lease C-50112 was no longer in its original term when it was eliminated from the CA.

We can find no justification now for not extending the holding in Celsius I to the instant case. The result is dictated by the statute, which applies where "[a]ny lease" is eliminated from or is in effect at the termination of "any" unit or "communitization * * * agreement." 30 U.S.C. § 226(m) (1994). Cessation of production from Well No. 6-1 resulted in the termination of the approved CA to which the lands in segregated lease COC-50112 were committed. Accordingly, under the Mineral Leasing Act, 30 U.S.C. § 226(m) (1994), and 43 C.F.R. § 3107.4, since the original term of the segregated lease had long since expired, that termination had the effect of extending the affected lease only for 2 years and so long thereafter as oil or gas is produced in paying quantities from or attributable to the leased lands. Landmark Exploration Co., 97 IBLA 96, 99 (1987); Jack L. McClellan, 34 IBLA 53, 55-57 (1978). Segregated lease COC-50112 was not subject to the indefinite extended term that it had been afforded at the time of segregation on December 9, 1988, when it came into existence. Thus, the lease could not, after September 18, 1992, continue to be held by production from Well No. 8-1.

BLM's November 20, 1996, decision held that "[l]easehold production, established prior to segregation of the base lease, from well No. 8-1 will not serve to continue COC50112 because the reason for segregation was commitment to a unit * * *." Since the CA was terminated, BLM's decision is correct and is accordingly affirmed.

However, we do not agree in the unique circumstances of this case that Lease COC-50112 terminated by operation of law on September 18, 1994, as held by BLM. This is because BLM affirmatively suspended the term of the lease by decision dated November 12, 1993. 10/ That suspension was to remain in effect at least until the first of the month after Celsius received notice from BLM whether its May 1993 decision would be vacated in light of the Board's decision in Celsius Energy Co., IBLA 92-32. The Board issued that decision on March 7, 1995. Contrary to what BLM stated in its November 1996 decision, the suspension that began November 1, 1993, was not "effectively lifted" by the Board's March 1995 decision. (Decision at 2.) Rather, it was also necessary under the express terms of the suspension

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10/ Since the matter is not raised on appeal, we do not adjudicate the question of whether the suspension imposed by BLM's Nov. 12, 1993, decision was in accordance with the requirements of 43 C.F.R. § 3108.5 or otherwise proper.

that BLM should notify Celsius whether it had decided to vacate its May 1993 decision. Only at that time could it be said that the final decision in the proceeding (which was that concerning Lease COC-50112) had occurred, in accordance with 43 C.F.R. § 3108.5. That did not transpire until BLM's November 1996 decision was received by Celsius on December 4, 1996.

Accordingly, the term of segregated lease COC-50112 was suspended from November 1, 1993, until December 4, 1996. Given this, the segregated lease clearly cannot be said to have terminated on September 18, 1994. Accordingly, to the extent that BLM so held, its November 1996 decision is set aside. In these circumstances, it is appropriate to remand the matter to BLM to decide how to apply the period of the suspension in computing how much, if any, of the 2-year extended term of the segregated lease remains.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed in part, set aside in part, and the case is remanded to BLM for further action consistent herewith.

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David L. Hughes
Administrative Judge

I concur:

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Bruce R. Harris
Deputy Chief Administrative Judge